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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

RODERICK J. FRASER, JR.
VICE CHAIR

Docket # 2011-17

**60 North Westfield Street
Agawam, Massachusetts**

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26G and Chapter 6, section 201, to determine whether to affirm an Order of the Agawam Fire Department requiring Bragarus, LLC, Fitness First, Inc. and Kurt and Paula Welker (hereinafter referred to as the "Appellants") to install automatic sprinklers in a building owned by them located at 60 North Westfield Street, Agawam, MA

B) Procedural History

By written notice received by the Appellant on August 8, 2011, the Agawam Fire Department issued an Order of Notice to the Appellants informing them of the provisions of M.G.L. c. 148, s. 26G, and the Department's determination to require the installation of automatic sprinklers in the Appellant's building, located at 60 North Westfield Street, Agawam, MA. The Appellants filed an appeal of said Order with this Board on September 20, 2011. The Board held a hearing on this matter on October 12, 2011, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were Michael Callan, Esq., Counsel to Fitness First; Norton Remmer, Code Consultant; and Kurt and Paula Welker, President and Vice President of Fitness First. Appearing on behalf of the Agawam Fire Department was Assistant Town Solicitor, Patrick Toney; Chief Alan C. Sirois; and Fire Inspector Scott Mitchell.

Present for the Board were: Roderick J. Fraser, Jr., Acting Chairman; Alexander MacLeod; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the Agawam Fire Department requiring sprinklers in the Appellant's building, in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal
3. Detailed Memorandum in Support of Appeal
 - 3A. Order of Notice of the Agawam Fire Department
 - 3B. Agawam Assessor's Beneficial Property Record Card
 - 3C. Analytical Engineering, Inc. Report (dated March 11, 2011)
 - 3D. Westside Enterprises, Inc. Proposal
4. Notice of Hearing to the Appellant
5. Notice of Hearing to Agawam Fire Department
6. Copies of two Memoranda that accompany Hearing Notices
7. Agawam Fire Department submission (items A-M including letters, photos and plans)

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellants on August 8, 2011, the Agawam Fire Department issued an Order of Notice to the Appellants informing them of the provisions of M.G.L. c. 148, s. 26G, and the Department's determination to require the installation of automatic sprinklers in the Appellants' building, located at 60 North Westfield Street, Agawam, MA. The Appellants filed an appeal of said Order with this Board on September 20, 2011. The Board held a hearing on this matter on October 12, 2011, at the Department of Fire Services, Stow, Massachusetts.
- 2) The representatives of the Appellants testified that the building at issue is a two-story, multi-level building that was constructed in 1979. The original building consisted of one story and had a floor area of approximately 22,792 s.f. They indicated that over the years, the construction of several additions increased the overall dimensions of the building. The additions included: a second floor addition of 4,800 s.f. in 1984; a separate first floor addition (containing a pool) of 7,200 s.f. in 1989 and four indoor racquetball courts in 1990, resulting in an additional 3,200 s.f. The current total building size is 37,992 square feet. The building currently operates as a health club facility that also features a restaurant and banquet facility, which are currently unoccupied.
- 3) The Appellants testified that on January 17, 2011, a portion of the roof collapsed due to excessive snow and ice load. The portion of the building, which is subject to repair and reconstruction, measures approximately 40' x 120' s.f. for a total of 4,800 s.f. Such area is approximately 12.6% of the total floor area of the building. There was no additional damage or repairs needed or planned for other portions of the building.
- 4) The Appellants contend that the repair work is not "major in scope," therefore the sprinkler requirements of s. 26G should not be triggered. In support of this conclusion, they referenced the Board's October 14, 2009 guidance document wherein the board established certain criteria, which may be used to determine if work is "major in scope or expenditure". The Appellant's code consultant also testified that it is his opinion that the current Massachusetts State Building Code would not require the installation of sprinklers under the circumstances of this case.

- 5) The Appellants testified that according to town records the assessed value of the building is \$1,402,700.00. The anticipated costs for the project at this time would be \$255,344.00, which would cover all repairs and related ancillary costs. This amount is approximately 18% of the overall value of the building. The Appellants indicated that the cost for sprinklers in this building would be approximately \$125,000.00 based upon gathered estimates.
- 6) The Appellants indicated that the contemplated work is not part of a series of anticipated projects. It was noted that such phased-in work could be considered by the Board in determining whether the work is considered “major in scope” for s. 26G purposes.
- 7) In support of the Agawam Fire Department, Chief Sirois testified that the Order of Notice was issued based upon the overall floor area of the building, which is clearly over 7,500 s.f., and the significant nature and scope of the planned work. It was his opinion that the work is “major in scope.” He also emphasized that the Board, in its memorandum, indicated that the 33% threshold was a guideline and that in the referenced memorandum, indicated that buildings and circumstances vary from one project to another and that it would be unreasonable to expect that a single set of criteria could reasonably apply to all situations. He indicated that construction activity related to this building, involving a building collapse, may be the type of work and circumstances that the Board would deem unique.
- 8) Chief Sirois testified that the building contains a mixed use group with some space designated A-2 and A-3 with other space designated as a “B” use group and that the existence of mixed use classification should be considered by the Board.
- 9) The Chief agreed with the Appellants that the building suffered unexpected damage as a result of the heavy snow load received this past winter. He indicated that temporary repairs were made to the building in April and that the building is now safe, from a fire safety standpoint, to occupy. Chief Sirois did not dispute the numerical estimates provided by the Appellants or the extent of floor area affected by the damage and related repair work.
- 10) Chief Sirois argued that this case is an anomaly due to the scope of the construction and the replacement of certain building elements. The Chief believes there have been large breeches in wall assemblies and also believes that due to the existence of the gym facilities and a day care for children within the gym, that sprinklers should be required in the building.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The relevant provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): “Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code.” This law reflects amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The provisions apply to “the construction of buildings, structures or additions ***or major modifications*** (emphasis added) thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*”. (Sec. 6, Chapter 508 of the Acts of 2008).

- 2) The Appellant does not contest a finding that the building consists of over 7,500 s.f. in floor area.
- 3) On October 14, 2009, this Board issued a general advisory document to guide persons who may be impacted by the amendments to s. 26G. In the memorandum, the Board discussed the meaning of the words “major alterations” as those terms are used in the statute and related case law. The board indicated that the determination of whether or not “major” alterations or modifications are taking place would be based upon certain factors relating to the: (A) **nature** of the actual work and (B) **the scope** of the work or cost/ benefit of sprinkler installation.

In determining the **nature** of the work, the Board indicated that it would review whether or not the planned physical work is the type of work that would make the effort to install sprinklers substantially less than it would have been if the building were intact or is the work merely minor repairs or cosmetic vs. major alterations. In determining the **scope** of the work, the Board will determine if the alterations affect a substantial portion of the building. This requires a review to determine how much of the building is being affected by the work; **or** a determination that the cost of installing sprinklers is moderate in comparison to the total cost of the work.

To assist fire officials, building owners and construction project managers in making decisions, the Board established two presumptions that may be used to determine if the scope of the planned alterations or modifications are “major” thus requiring sprinklers to be installed throughout a building. They concluded:

- 1) Major alterations or modifications are reasonably considered major in scope when such work affects thirty-three (33) % or more of the “total gross square footage” of the building, calculated in accordance with section 26G.
- 2) Major alterations or modifications are reasonably considered major in scope or expenditure, when the total cost of the work (excluding costs relating to sprinkler installation) is equal to or greater than thirty-three (33) % of the assessed value of the subject building, as of the date of permit application.

It was the conclusion of the Board that if the nature of the work is the type of work described in **A** and also meets at least one of the two presumptions described in **B** above, then it can be reasonable to conclude that the alterations or modifications are “Major”, thus requiring sprinklers throughout the building.

- 4) Based upon the facts presented at the hearing, the Board finds that the planned construction/repairs is not considered “major” since the work does not affect 33% or more of the “total gross square footage” of the building. Additionally, the proposed work to the building is not equal to or greater than thirty-three (33) % of the assessed value of the subject building, as of the date of permit application.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence and testimony presented at the hearing, the Board hereby **reverses** the determination of the Agawam Fire Department to install sprinklers throughout the building in accordance with the requirements of M.G.L. c. 148, § 26G.

H) Vote of the Board

Roderick J. Fraser, Jr., Acting Chairman	In Favor
Alexander MacLeod	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Roderick J. Fraser, Jr., Acting Chairman

Dated: November 15, 2011

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Kurt and Paula Welker
c/o Bragaraus LLC and Fitness First, Inc.
60 North Westfield Street
Agawam, Massachusetts 01030

Chief Alan C. Sirois
Fire Inspector Scott Mitchell
Agawam Fire Department
800 Main Street
Agawam, Massachusetts 01001